

**United States Department of Labor
Employees' Compensation Appeals Board**

SHERRY D. MEHRLE, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Winfield, MO, Employer**

)
)
)
)
)
)
)
)
)
)
)
)

**Docket No. 05-1376
Issued: January 20, 2006**

Appearances:
Sherry D. Mehrle, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On June 8, 2005 appellant filed a timely appeal from the Office of Workers' Compensation Programs' July 14 and December 17, 2004 merit decisions and April 1, 2005 nonmerit decision, denying her occupational injury claim. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUES

The issues are: (1) whether appellant has met her burden of proof in establishing that she sustained an injury in the performance of duty; and (2) whether the Office properly refused to reopen appellant's case for further review of the merits pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On November 21, 2003 appellant, then a 48-year-old rural mail carrier, filed an occupational disease claim alleging that she developed bilateral carpal tunnel syndrome, a torn rotator cuff and suprascapular nerve entrapment as a result of performing duties related to her

federal employment. She first realized that her condition was caused or aggravated by her employment on March 23, 2003.

Appellant submitted physicians' notes dated July 15, 2002 from Dr. John W. McAllister, a Board-certified orthopedic surgeon, who indicated that her repetitive duties as a mail carrier caused her shoulder pain. Appellant also submitted notes for the period May 18, 2000 through October 9, 2003. On May 10, 2000 Dr. McAllister diagnosed "[d]e Quervain's tenosynovitis resolved." On September 28, 2000 he diagnosed "recurrent [d]e Quervain's tenosynovitis." A February 26, 2001 note reflects appellant's complaints of right shoulder and neck pain radiating down her arm. Dr. McAllister noted that she injured her neck in a 1991 motor vehicle accident. He indicated that appellant's cervical range of motion was essentially normal and that there was no instability in the shoulder. An x-ray report demonstrated considerable degenerative disc disease, particularly at C4-5, C5-6 and C6-7. On March 27, 2003 appellant was seen for severe right shoulder pain. On April 7, 2003 he stated that a magnetic resonance imaging (MRI) scan revealed no rotator cuff abnormalities and that a nerve conduction study showed normal cervical innervation. Notes dated March 27, 2003 reflect that she experienced right shoulder pain since 2001. Appellant indicated that the day after delivering telephone books pursuant to her employment and doing an extensive amount of gardening, she experienced severe pain. Dr. McAllister provided a diagnosis of "suprascapular neuropathy, probably related to a cyst at the suprascapular notch." Notes dated April 24, 2003 reflected status post-arthroscopic subacromial decompression, release of the suprascapular nerve and right carpal tunnel release. On August 25, 2003 Dr. McAllister indicated that appellant's shoulder pain was much improved and that he would release her to work with restrictions.

In a November 21, 2003 statement, appellant indicated that she began having problems with her neck and back in 2001. She stated that after making 600 telephone book deliveries during the previous week, she awakened at 3:00 a.m., on the morning of March 24, 2003 to severe shoulder pain that required her to seek emergency treatment.

Appellant submitted an April 15, 2003 operative report from Dr. McAllister describing a right shoulder arthroscopy with subacromial decompression, intra-articular debridement, open suprascapular nerve decompression and carpal tunnel release.

By letter dated December 29, 2003, the Office notified appellant that the information submitted was insufficient to establish that her shoulder condition was work related. The Office advised her to submit additional evidence, including a rationalized medical report describing symptoms and an explanation of the relationship between the work-related activities and the diagnosed condition.

In a January 14, 2004 letter, appellant stated that her shoulder condition had worsened over the years. She indicated that she delivered mail in her own vehicle, driving with her left foot and hand, while placing mail in the mailboxes with her right hand, and that the process involved much stretching and reaching. Appellant's duties involved casing mail, which required her to hold her arms and hands up for several hours at a time. She related that in the process of delivering 600 telephone books during the week leading up to March 19, 2003, she had loaded all of the books into her automobile (10 to 12 books in each bundle) and had distributed one

book in each box on her route. Appellant attributed her condition to the additional lifting and effort involved in the distribution of books. She also indicated that from March 20 to 23, 2003, she was off work, helping her husband paint a living room, cleaning paint from windows and working outside on her flower beds.

Appellant submitted notes from Dr. Joseph G. Viviano, Jr., a Board-certified internist. On November 7, 1994 she was seen for complaint of pain in her upper back and neck. He provided a diagnosis of recurrent cervical/thoracic spine strain and stated that her condition “probably relates back to a motor vehicle accident in the Spring of 1991.” On May 5, 1997 Dr. Viviano indicated that appellant was experiencing pain in the right scapular area traveling down her right arm and stated that “the entire issue of whether or not this is work related is unclear.” On September 28, 1998 and September 10, 2001 she continued to experience neck and shoulder pain. In notes dated April 2, 2003, Dr. Viviano provided an impression of “right shoulder pain, etiology unclear.” He related that appellant had recently completed a weekend of painting, working in her yard and cleaning, after which she awakened with extreme pain in the scapular area. An x-ray report showed disc disease at C5-6 and C6-7 with degenerative changes at those levels.

In a November 11, 2004 letter, Postmaster Doug Winfield stated that appellant performed regular rural carrier duties and that she had never reported any injuries. He indicated that she had delivered 600 telephone books, weighing 2.2 pounds each, over a 5-day period. The postmaster further indicated that appellant cased mail approximately three hours per day and that her route required approximately five and a half hours to deliver. The evidence of record includes a job description for a rural carrier.

In a report dated February 5, 2004, Dr. Ronald Fischer, a Board-certified physiatrist, provided diagnoses of: “bilateral CTS, S/P (R) release and pending (L) release; H/O (R) suprascapular nerve entrapment; (R) supra spinatus tendonitis, S/P subacromial decompression; and cervical disc protrusion, degenerative disc disease and spondylosis C4 to C7.” He reviewed the history of appellant’s condition, indicating that she had been a rural carrier since 1986. Dr. Fischer stated that he had reviewed the medical records, including reports from Dr. McAllister and Dr. Viviano, as well as radiology and electromyogram (EMG) reports. He stated that appellant sustained an injury to the right suprascapular nerve during delivery of the telephone books. Dr. Fischer opined that her left carpal tunnel syndrome was related to repetitive usage of her left hand to case and deliver mail and her right carpal tunnel syndrome and right supraspinatus impingement were “most likely aggravated by her repetitive work activities as a rural mail carrier.” He stated that “the cervical disc protrusion/disc degeneration may or may not be due to her job as a rural mail carrier. However, the repetitive turning of the neck would definitely aggravate the condition.” In a February 3, 2004 duty status report, Dr. Fischer provided a diagnosis of suprascapular nerve entrapment and indicated that appellant’s injury occurred while she was lifting and carrying telephone books on March 19, 2003.

On February 17, 2004 the Office accepted appellant’s claim for bilateral carpal tunnel syndrome.

By decision dated February 17, 2004, the Office denied appellant's claim for a right shoulder condition.

Appellant submitted numerous reports from Dr. McAllister and Janice Martin, R.N., related to her carpal tunnel condition. She submitted no new medical evidence relating to her shoulder condition. Appellant was released to return to work full duty on May 6, 2004 pursuant to her accepted carpal tunnel claim. However, she did not return to work due to her cervical spine condition.

Appellant filed claims for compensation relating to her carpal tunnel syndrome from March 24 through August 15, 2003. By decision dated May 21, 2004, the Office denied her claims, finding that she did not have a disability for work due to the accepted March 24, 2003 work injury.¹

On May 26, 2004 appellant filed a request for reconsideration of the Office's February 17, 2004 decision, denying her shoulder and neck condition.

In a decision dated July 14, 2004, the Office denied modification of its February 17, 2004 decision.

Appellant submitted a narrative report dated September 7, 2004 from Dr. McAllister reflecting that he had treated her for neck and shoulder pain since February 26, 2001. He discussed her job requirements which involved repeated reaching through a car window and passing mail into mailboxes. Dr. McAllister indicated that as of July 15, 2002, there was no evidence of any rotator cuff weakness in the right shoulder, but that appellant did have right shoulder pain and complained that repeated use of her right arm delivering mail was exacerbating her pain. He noted that on March 22, 2003 she experienced severe pain, for which she sought emergency treatment and that, when he examined her on that date, the infraspinatus weakness was profound. Dr. McAllister stated that a subsequent MRI scan showed some evidence of tendinitis in supraspinatus but no evidence of a tear. He stated that, "while it is likely that some component of this suprascapular nerve entrapment and tendinitis existed prior to March 24, 2003, appellant's complaints increased dramatically after placing telephone books in mailboxes." Dr. McAllister did not believe that the 1991 motor vehicle accident which resulted in a neck injury, was the event which led to the suprascapular nerve entrapment, carpal tunnel syndrome or rotator cuff tendinitis. He opined that the degenerative disc changes were "more likely" the result of the motor vehicle accident, rather than the result of her employment. Dr. McAllister concluded to a reasonable degree of medical certainty that "the lifting of the telephone books repeatedly was the significant aggravating event that led to suprascapular nerve entrapment and complaints of carpal tunnel syndrome and tendinitis."

On September 22, 2004 appellant requested reconsideration of the Office's February 17, 2004 decision.

¹ Because more than one year elapsed between the issuance of the Office's May 21, 2004 decision and the date appellant filed her appeal, the Board lacks jurisdiction to review the May 21, 2004 decision. See 20 C.F.R. § 501.3(d)(2).

In a decision dated December 17, 2004, the Office denied modification of the July 19, 2004 decision, finding that appellant had not submitted a well-reasoned medical opinion that she had developed a right shoulder condition because of the specific work she performed as a rural carrier.

On March 7, 2005 appellant requested reconsideration. In support of her request, appellant provided previously submitted reports from Dr. Viviano dated May 4 and 19, 1997 and various 1997 test results. Appellant reiterated her contention that the repetitive nature of her job was the cause of her shoulder condition.

In a decision dated April 1, 2005, the Office denied appellant's request for reconsideration on the grounds that she had neither raised substantive legal questions, nor included new and relevant evidence.

LEGAL PRECEDENT -- ISSUE 1

An employee seeking benefits under the Federal Employees Compensation Act² has the burden of establishing the essential elements of her claim, including the fact that the individual is an employee of the United States within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disability and/or specific condition for which compensation is claimed are causally related to the employment injury.³ These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.⁴

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The medical evidence required to establish causal relationship, generally, is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician's rationalized opinion on the issue of whether there is a causal relationship between the claimant's diagnosed condition and the implicated employment factors. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the

² 5 U.S.C. §§ 8101-8193.

³ *Joe D. Cameron*, 41 ECAB 153 (1989); *Elaine Pendleton*, 40 ECAB 1143, 1145 (1989).

⁴ *Juanita Pitts*, 56 ECAB ____ (Docket No. 04-1527, issued October 28, 2004). *Victor J. Woodhams*, 41 ECAB 345 (1989).

nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.⁵

ANALYSIS -- ISSUE 1

The Board finds that the case is not in posture for decision regarding whether appellant sustained an injury in the performance of duty.

An employee who claims benefits under the Act has the burden of establishing the essential elements of his or her claim. The claimant has the burden of establishing by the weight of reliable, probative and substantial evidence that the condition for which compensation is sought is causally related to a specific employment incident or to specific conditions of the employment. As part of this burden, the claimant must present rationalized medical opinion evidence, based upon a complete and accurate factual and medical background, establishing causal relationship.⁶ However, it is well established that proceedings under the Act are not adversarial in nature and while the claimant has the burden of establishing entitlement to compensation, the Office shares responsibility in the development of the evidence to see that justice is done.⁷

Dr. Fischer opined that appellant's repetitive work activities as a rural carrier most likely caused or at least aggravated her right supraspinatus. He explained that the cervical disc degeneration may or may not be due to her employment, but that the repetitive turning of appellant's neck would definitely aggravate the condition. In providing a diagnosis of suprascapular nerve entrapment, he indicated that appellant's injury occurred while she was lifting telephone books on March 19, 2003. There is substantial evidence in the record of Dr. McAllister's treatment of her for neck and shoulder pain since February 2001 and his reports corroborate appellant's factual allegations that she sought emergency treatment for severe shoulder pain early in the morning on March 22, 2003. He opined that, while it was likely that some component of her suprascapular nerve entrapment and tendinitis existed prior to March 24, 2003, to a reasonable degree of medical certainty, "the lifting of the telephone books repeatedly was the significant aggravating event that led to suprascapular nerve entrapment and complaints of carpal tunnel syndrome and tendinitis." Dr. McAllister and Dr. Fischer gave a history of appellant's condition, reported detailed findings of their examinations of her and indicated that they had reviewed appellant's medical records and test results. Both physicians reflected an understanding of appellant's job requirements and the repetitive nature of her duties.

The Board notes that, while none of the reports of appellant's attending physicians are completely rationalized, they are consistent in indicating that she sustained an employment-related shoulder condition and are not contradicted by any substantial medical or factual

⁵ *Id.*

⁶ See *Virginia Richard, claiming as executrix of the estate of Lionel F. Richard*, 53 ECAB 430 (2002); see also *Brian E. Flescher*, 40 ECAB 532, 536 (1989); *Ronald K. White*, 37 ECAB 176, 178 (1985).

⁷ *Phillip L. Barnes*, 55 ECAB ____ (Docket No. 02-1441, issued March 31, 2004); see also *Virginia Richard*, *supra* note 6; *Dorothy L. Sidwell*, 36 ECAB 699 (1985); *William J. Cantrell*, 34 ECAB 1233 (1993).

evidence of record. Therefore, while the reports are not sufficient to meet her burden of proof to establish her claim, they raise an uncontroverted inference between appellant's claimed condition and the accepted employment factors and are sufficient to require the Office to further develop the medical evidence and the case record.⁸

On remand the Office should prepare a statement of accepted facts and refer appellant, along with her medical records for a second opinion examination, in order to obtain a rationalized opinion as to whether her current condition is causally related to factors of her employment, either directly or through aggravation, precipitation or acceleration.

CONCLUSION

The Board finds that this case is not in posture for decision as to whether or not appellant sustained an injury in the performance of duty.⁹

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers Compensation Programs dated April 1, 2005 and December 17 and July 14, 2004 are set aside and the case is remanded for further action by the Office consistent with this decision.

Issued: January 20, 2006
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

⁸ See *Virginia Richard*, *supra* note 6; see also *Robert A. Redmond*, 40 ECAB 796, 801 (1989).

⁹ In light of the Board's ruling on the first issue, the second issue before the Board is moot.